THE CHURCH OF ENGLAND

THE GENERAL SYNOD

EXPLANATORY MEMORANDUM TO THE

CLERGY DISCIPLINE RULES 2005

2005 No.2022

1. This explanatory memorandum has been prepared by the Legal Office of the National Institutions of the Church of England and is laid before Parliament by the General Synod of the Church of England.

2. Description

2.1 The Clergy Discipline Measure 2003 ("the Measure") received the Royal Assent in July 2003. The Measure is expected to be fully in force by the end of 2005 when it will provide a new structure for dealing with formal complaints of misconduct made against members of the clergy (except in relation to matters involving doctrine, ritual or ceremonial, which will continue to be governed by the Ecclesiastical Jurisdiction Measure 1963).

2.2 The Clergy Discipline Rules 2005 ("the Rules") are made pursuant to section 45 of the Measure (which came into force on 1st October 2003) for the purposes of carrying into effect the provisions of the Measure. They provide detailed procedural rules for dealing with complaints made under the Measure and for the imposition of penalties under the Measure following certain findings or orders of secular courts.

3. Matters of special interest to the Joint Committee on Statutory Instruments

Not applicable: the Rules do not fall within the terms of reference of this Committee. However, the relevant information is as follows:

(i) Fees increases: Not applicable.

(ii) 21-day rule: The Order does not breach this rule.

(iii) If the instrument comes into force before it was laid: It does not.

(iv) If the instrument uses novel or especially complex powers: It does not.

4. Legislative Background

4.1 **General:** The need for new disciplinary procedures was recognised in 1996 in the report *Under Authority,* which was published by a working party set up on

behalf of the General Synod to review clergy discipline and the working of the ecclesiastical courts. *Under Authority* examined the working of the current disciplinary system (the Ecclesiastical Jurisdiction Measure 1963), outlined its perceived strengths and weaknesses, and made recommendations for a comprehensive change in the way that clergy discipline was to be handled in the future. Those recommendations were largely accepted by the Synod in November 1996. An implementation group was set up, followed by the introduction into the Synod of a draft Measure which, after due synodical consideration, received Final Approval by the Synod in November 2000. Having been approved by Parliament the Measure received the Royal Assent in July 2003.

4.2 **EU legislation:** The Rules do not implement EU legislation.

5. Extent

5.1 The Rules apply only to England (apart from a small number of parishes wholly or partly in England which are within the Church in Wales) and to about twenty parishes wholly or partly in Wales which are within the Church of England.

6. European Convention on Human Rights

6.1 Not applicable, as the Rules are to be taken on the negative resolution procedure and do not amend primary legislation. However, the Legal Office is of the view that the Rules are fully compatible with Convention rights.

7. Policy background:

7.1 The Church needs a new, modern and workable structure for clergy discipline to replace that in the Ecclesiastical Jurisdiction Measure 1963, which has proved to be unsatisfactory in practice. The procedures of the 1963 Measure are based on that of a criminal court and have turned out to be inflexible, expensive and very slow moving in comparison to tribunal procedures which have been introduced widely elsewhere, especially for discipline in other professions. The new procedures under the Measure and the Rules offer a credible, fair and open system for administering discipline. It will be easy for complainants to access and will be prompt and flexible in response.

7.2 All those admitted to Holy Orders of the Church of England are potentially within the scope of the Measure, whether deacon, priest, bishop, or archbishop, and whether or not in active ministry (with the exception of clergy holding office in a Royal Peculiar). Where the formal complaint concerns priests or deacons, the bishop plays an important role, because in each diocese it is the bishop who is responsible for administering discipline. Where the formal complaint concerns the bishop, it is the relevant archbishop who is responsible for dealing with discipline.

7.3 There are four grounds under the Measure for alleging misconduct against a member of the clergy ("the respondent"), namely: acting in breach of ecclesiastical law, failing to do something which should have been done under ecclesiastical law, neglecting to perform or being inefficient in performing the duties of office, and

engaging in conduct that is unbecoming or inappropriate to the office and work of the clergy.

7.4 The disciplinary process is started by a formal written complaint, which is made to the bishop. The complaint must be made within one year of the misconduct in question, or within one year of the last occasion of misconduct where there is a series of acts or omissions amounting to misconduct. The person making the complaint ("the complainant") must produce written evidence in support of the complaint. The complaint and the evidence in support is referred in the first instance to the diocesan registrar for a preliminary scrutiny. The registrar checks to see if the complainant has the right to complain, and whether the allegations would amount to misconduct under the Measure if proved; the registrar makes a report on these matters for the bishop. On receipt of the registrar's report the bishop may dismiss the complaint if he decides that the complainant is not entitled to complain or if the issues raised do not justify further serious consideration as a disciplinary matter (in which case the complainant may seek a review by the President of Tribunals of the bishop's decision). This initial sieve procedure ensures that trivial, malicious and vexatious complaints are rejected.

7.5 If the bishop determines that the complaint is to be dealt with as a disciplinary matter the bishop will, within four weeks of receiving the registrar's report, decide which of the following five courses to adopt to deal with the complaint:

(a) take no further action (in which case the complainant may seek a review by the President of Tribunals of the bishop's decision);

(b) with the respondent's consent, leave the complaint on the record for up to five years (known as a 'conditional deferment');

(c) appoint a conciliator with the agreement of the complainant and the respondent to attempt to bring about a conciliation;

(d) where a respondent admits misconduct, impose an appropriate penalty with the respondent's consent; or

(e) refer the complaint to a formal investigation. A report is prepared by the Designated Officer and is submitted to the President of Tribunals who decides if there is a case to answer.

7.6 If, following the formal investigation, there is no case to answer, no further steps are taken under the Measure. If there is a case to answer then the President refers the complaint to the bishop's disciplinary tribunal. This will consist of five people (two laity, two clergy, and a legally qualified chair) selected by the President of Tribunals from the relevant provincial panel. The tribunal will determine the complaint on a majority verdict using the civil standard of proof.

7.7 Complaints made against bishops are subject to similar procedures. The main differences are that the complaints are made to the relevant archbishop, the preliminary scrutiny is conducted by the provincial registrar, and the Vicar-General's court, rather than the bishop's disciplinary tribunal, hears any case to be answered.

7.8 The penalties that can be imposed under the Measure range from a life-long prohibition from exercising any functions, to a rebuke. All penalties imposed under the Measure will be recorded in the Archbishops' list to be maintained by the archbishops jointly. Under the Measure, the respondent will be informed of the particulars to be recorded, and may request the President of Tribunals to review the entry. The President will be able to direct, if appropriate, that the entry on the list should be amended, or removed.

7.9 The Measure also provides a separate procedure whereby a member of the clergy, who commits a criminal offence and receives a sentence of imprisonment, may be liable to a penalty of removal from office, or prohibition from exercising any functions. A similar procedure is available if a respondent has had a decree of divorce or an order of judicial separation made against him or her and has committed adultery, behaved unreasonably or deserted the former spouse.

7.10 The Rules carry into effect all these provisions of the Measure.

7.11 The Rules were the subject of a widespread consultation in early 2005 with many different groups and individuals, both within and outside the Church (involving over one hundred consultees). The response to this consultation was very positive with the Rules only having to be slightly revised to meet some concerns that were raised. At the meeting of the General Synod of the Church of England in York on July 9th the Rules, as revised following the consultation, were overwhelmingly approved.

7.12 Under the Measure there are certain rights of appeal from a decision of the tribunal. The appeal is either to the Court of the Arches in the Canterbury province or to the Chancery Court of York. Separate appeal rules to deal with such appeals have been prepared and are currently undergoing a consultation process. The appeal rules will be put before the General Synod for approval in November and will come into force at the same time as the Rules

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for the Rules as they will have no significant impact on business, charities or voluntary bodies outside the Church of England.

8.2 The impact on the public sector is insignificant.

9. Contact

Mr Robert Wellen at the Legal Office, tel: 020 7898 1371 or e-mail: robert.wellen@c-of-e.org.uk can answer any queries regarding this instrument.